

**Special House Legislative Commission to Study the Effects and Procedures for the
Reorganization of the Rhode Island Coastal Resources Management Council**

Thursday, November 18

Time: 1:00 PM

Meeting Notes

(Not intended as official meeting minutes)

Commission Members in Attendance: Representative Deborah Ruggiero, Representative Lauren Carson, Kendra Beaver, Jamie Hainsworth, Stephen Land, David Baud, Richard Hittinger, Michael McGiveney, Sven Risom

I. Call meeting to order

Chairwoman Ruggiero called the meeting to order at 1:04 PM

II. Opening Comments: Chair Deborah Ruggiero

Chair Ruggiero welcomed the commission members and thanked the URI Coastal Institute for hosting the meeting. The meeting was rescheduled from October 27, 2021, when Rhode Island had a severe wind storm that left the University without power.

III. Continuation of discussion and questions on the presentation from the October 6, 2021 meeting by Jeffrey Willis, Executive Director, and James Boyd, Deputy Director, of the Coastal Resources Management Council (CRMC) on an overview of CRMC, staffing, major issues before CRMC, structure and jurisdiction of CRMC.

Jeff Willis provided an overview:

- The CRMC council has ten members, nine are appointed by the governor and one is the DEM director. As of now CRMC has seven active members and is working with the administration to fill the vacancies. After a council member is nominated by administration the Senate would have to confirm.
- The council can create subcommittees as needed, one of the standing committees is Ocean SAMP and another is Shoreline Change. Both were the direct result of policy and program initiatives. Two subcommittees that have met on a regular basis since the 1970s are the Planning and Procedures subcommittee and the Rights of Way subcommittee. Planning and Procedures develops program goals and objectives and any new initiatives are vetted in the subcommittee. This is where changes to existing regulations and processes are discussed. The committee makes sure council programs are relevant, up to date and flexible. The subcommittee is chaired by the Chair of the Council.

- Rights of Way subcommittee researches rights of way and identifies them. The subcommittee does not have a budget to do the work but they partner with municipalities and with a Roger Williams University Law program.
- There are five subcommittees included in this chart.

Representative Carson asked why the chair of the council is the chair of all the subcommittees. Jeff Willis answered that the council chair is the defacto chair of the subcommittees and can appoint other subcommittee chairs. The current chair is the acting chair and has not appointed any subcommittee chairs. Representative Carson recommended that the current acting chair appoint chairs of the subcommittees soon because it does not reflect well on the commission to have the same person chairing all the subcommittees.

Representative Ruggiero asked if there is a requirement for attendance. Jeff Willis responded that council members must sit on at least one subcommittee. The Rights of Way subcommittee has a requirement that a member must attend all the meetings on a rights of way matter to be able to vote on it.

Jamie Hainsworth asked how council members are chosen. Jeff Willis responded that generally three are from coastal communities from greater 25,000 and three members are from communities of less than 25,000, three members are public but one must be from a coastal community.

Jamie Hainsworth continued by asking if they are required to have minimum qualifications, experience or expertise. Jeff Willis replied that there are no statutory requirements. If there are three unexcused absences the chair has the right to remove the member. The chair excuses the absences.

Jaimie Hainsworth stated that he attends many meetings and usually there are only six members there, and the votes are usually similar to 4-2 and if more members attended the outcome of the vote could have been different. Jeff Willis responded that full membership is ideal. Right now, the six that are attending are regularly attending.

Representative Ruggiero asked how many council members are from communities from less than 25,000 and how many are from more than 25,000 and if there is any overlap where one community is over represented. Jeff Willis replied that the enabling legislation only allows for two members from any one municipality.

Representative Ruggiero responded that we know that attendance is not mandatory, and asked if CRMC council members are required to do a site visit before a vote. Jeff Willis responded that they are not required to by statute but are allowed to go on site visit. Representative Ruggiero asked how many council members go out to visit a site before they vote on a permit. Jeff Willis responded that most of the time if the council members do visit a site they will put that on the record, they do not necessarily tell staff ahead of time that they are going to visit a site.

Michael McGivney asked how CRMC is being proactive in addressing the gear issue in aquaculture. Jeff Willis responded that staff researches and brings the information to the planning and procedures subcommittee. The staff makes recommendations and the subcommittee decides if they will pursue it. Staff does two types of presentations to the planning and procedures subcommittee. One is presenting the issue with some possible solutions and maybe some proposed language and the other is more educational, bringing the council up to speed on an issue and they will do multiple presentations if needed as the issue matures.

Sven Risom asked what happens when a staff recommendation is overturned by the council. Jeff Willis answered that the staff brings issues to the planning and procedures subcommittee and if the members do not like the direction they will suggest a different take on the issue. And sometimes the subcommittee will not agree with a regulation recommended by the staff. The staff looks for the council's direction. While the staff has technical expertise the council might not agree with the direction the staff is moving the agency. Sven Risom asked how the council justifies overturning a staff recommendation. Jeff Willis responded that when the council overturns a staff decision they have to put their reasons on the record. If the council goes against the staff on a policy level, the staff will work on the changes that are necessary.

Michael McGivney asked if there are other states that have a council that is made up of political appointees that make decisions on highly technical matters. Representative Ruggiero responded that the December 9th meeting will address this. Jeff Willis added that Rhode Island is in the minority of coastal management agencies as a direct permitting agency. Most are network programs and exist in various departments of the state. Massachusetts has coastal policies within the fisheries, planning and regulatory divisions. Connecticut is a hybrid; the coastal management agency has direct authority in the water and municipalities have authority on the land. Mike McGivney added that he had experience with Massachusetts and the coastal zone management did not make the actual permitting decisions, the DEP made the permitting decision or in some cases it is the local municipalities.

Kendra Beaver added that the statute requires that council appointments from municipalities are in a representative capacity, meaning that they have an official position in the community. In the past that was not done, so often the appointments were retroactive. The intent of the statute was to have people that truly served in a representative capacity of the municipality, like a planner, or someone with a real function so they could represent the community with these decisions.

Kendra Beaver continued that an advisory council could have input to the bigger policy issues. I submit it should be the staff itself that makes the decision. The staff at CRMC is fantastic and does a great job. She asked how the council is helpful if they do not have the expertise. Jeff Willis responded that council members attend the meetings and coastal education series and are brought up to speed on the issues that come in front of them. Their participation and experience gives the staff a different perspective. They give input

to staff in a public forum from a different perspective. If they see a different pathway forward, staff can interject with more information, but it is ultimately the council's decision.

Rep. Ruggiero stated the general laws state that elected or appointed municipal officials serve on the council only as long as they should remain in office. She asked if there are any council members representing communities that are no longer in office. Jeff Willis replied that they are up to date, except one member who is not participating in meetings. The statute also states that the council member sits until the appointing authority replaces the member. CRMC's legal counsel believes that once you are appointed by the appointing body you sit on the council until you are replaced. Rep Ruggiero replied the statute might need to be changed.

Mike McGivney spoke in support of the current structure. Staff recommended a lease that that Shellfishermans's Association opposed. The association went to the council and let them know they opposed it. To the credit of the council it was denied because it was a tie vote. We would like to have more expertise on the council but the fact that there is some wiggle room might be good thing. There is something positive about having people not on the professional staff overview something for a bigger picture. Jeff Willis said the council members may not be trained in environmental science, but there is a human dimension. The council weighs the staff report and the public input in their decision. The staff may not be privileged to these views until after the recommendation was made.

David Baud asked how the vote is tallied if some members do not attend. Jeff Willis said the quorum is six and as long as six members are in attendance, they can hold a meeting.

Sven Risom asked what the benefits of the current CRMC structure are. Jeff Willis answered that a typical agency like DEM has an executive agency structure. CRMC is different. Having a council act on staff recommendations in a public forum, usually after hours to encourage public participation is a plus. The DEM hearings usually happened during work hours when the public cannot participate. And at a DEM hearing, there is less interaction with the review body, the CRMC members can ask questions of objectors and supporters which adds to the process. Sven Risom also asked if there are any minuses to the CRMC structure. The council meets on prescribed days of the month so members can put it in their calendar in advance, a contested case subcommittee is scheduled ad hoc and it is harder to coordinate schedules. That might lengthen the process because working with the volunteer's schedules can be challenging.

Kendra Beaver followed up by asking if it is a good idea to not have a staff attorney represent the staff at meetings. Jeff Willis stated that outside counsel is at the hearings and also an outside counsel is at CRMC everyday advising the CRMC staff, including reviewing written recommendations and enforcement matters. We have not had a dedicated hearing officer for quite some time. Legal counsel has represented staff at subcommittee meetings.

Chair Ruggiero stated that she thinks CRMC is understaffed, no hearing officer on staff, not enough enforcement and not enough staff to handle all the work. CRMC has a much broader focus than 50 years ago.

Sven Risom agreed that CRMC covers so much from offshore wind, climate change and aquaculture. Jeff Willis agreed staffing is a major issue. The hearing officer is out on leave. CRMC has not had hearings for about a year. CRMC asked for more staff in each budget, but the administrations have not supported it. Richard Hittinger said that the report from NOAA already points out the staffing issues. CRMC needs to act on upcoming staff changes, evaluate staffing needs and increase the enforcement staff. Jeff Willis noted that the legislature also supported CRMC by increasing the fine capacity which was also recommended in the NOAA report.

Lauren Carson stated that the state should review the responsibilities of CRMC. It has expanded over the years. Maybe the state needs to assign some of these duties to another agency. We need to think outside of the box.

Michael McGivney stated that fifteen years ago the fisheries council changed so the council gets staff recommendations, and then the council's recommendation goes to the DEM director, who can support or deny it. Maybe that could be a less conflicting set up for CRMC.

Kendra Beaver remarked that the statute requires the governor to appoint two hearing officers. One has not been appointed in dozens of years. Jeff Willis stated that the hearing officers always worked pro bono for CRMC.

IV. Closing Comments: Chair Deborah Ruggiero

The next meeting will be on December 9th at the State House with Grover Fugate, former Director of CRMC and Betsy Nicholson of NOAA.

V. Adjournment

Meeting adjourned at 1:57